



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1997

Mr. Philip E. McCleery
Sheehy, Lovelace & Mayfield, P.C.
510 N. Valley Mills Drive, Suite 500
Waco, Texas 76710

OR97-0433

Dear Mr. McCleery:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104065.

The McLennan County Junior College District (the "district"), which you represent, received a request for information from an employee of the district. You state that, with the exception of certain personal notes of two other district employees, the requested information has been released to the requestor. You assert that these personal notes are excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered your arguments and have reviewed the documents submitted.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

After reviewing the submitted documents, we conclude they do not contain information that is highly intimate and embarrassing, with the exception of one notation which we have marked (see red tag). Furthermore, a public employee's job performance does not generally constitute his or her private affairs, Open Records Decision No. 470 (1987), and there is a legitimate public interest in the job performance of public employees. The district, therefore, with the exception noted above, may not withhold the requested information under section 552.101.

We next address your argument under section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Such advice, recommendations, and opinions may pertain to administrative and personnel matters of broad scope that affect the governmental body's policy mission. Open Records Decision No. 631 (1995). An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6.

The notes at issue relate to specific personnel and internal administrative matters within the reading department of the district, rather than to matters reflecting the broader policy mission of the district. Therefore, we conclude that the requested information may not be withheld from disclosure under section 552.111.

In conclusion, with the exception of the one item we have marked, the requested information must be released to the requestor in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 104065

Enclosures: Marked documents

cc: Ms. Margarita Sanchez
3201 Duval Rd., #1327
Austin, Texas 78759
(w/o enclosures)